
United States
Circuit Court of Appeals
For the Ninth Circuit.

WARREN H. PILLSBURY, Deputy Commissioner,
Thirteenth Compensation District under the Long-
shoremen's and Harbor-Workers' Act,

Appellant,

vs.

PACIFIC STEAMSHIP COMPANY, a corporation,
and UNION INSURANCE SOCIETY OF CAN-
TON, LTD., a corporation,

Appellees,

V. H. HAMMER,

Defendant.

Transcript of Record.

Upon Appeal from the United States District Court for the Southern
District of California, Central Division.

FILED

AUG 24 1937

PAUL F. O'BRIEN,

CLERK

United States
Circuit Court of Appeals
For the Ninth Circuit.

WARREN H. PILLSBURY, Deputy Commissioner,
Thirteenth Compensation District under the Long-
shoremen's and Harbor-Workers' Act,

Appellant,

vs.

PACIFIC STEAMSHIP COMPANY, a corporation,
and UNION INSURANCE SOCIETY OF CAN-
TON, LTD., a corporation,

Appellees,

V. H. HAMMER,

Defendant.

Transcript of Record.

Upon Appeal from the United States District Court for the Southern
District of California, Central Division.

INDEX.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original record are printed literally in italic; and, likewise, cancelled matter appearing in the original record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

	PAGE
Amendment to Bill of Complaint.....	13
Answer	16
Assignment of Errors.....	36
Bill of Complaint.....	3
Citation	2
Clerk's Certificate	44
Decision	21
Decree	29
Exhibit "A"—Compensation Order—Award of Compensation	9
Minute Order	20
Minute Order	28
Names and Addresses of Attorneys.....	1
Notice of Motion for Leave to Amend Bill of Complaint	12
Order Allowing Appeal.....	35
Order That Original Copy of the Record Before the Deputy Commissioner Need Not Be Printed and May Be Transmitted by the Clerk to the United States Circuit Court of Appeals.....	41
Petition for Appeal.....	33
Praecipe for Transcript of Record.....	42
Stipulation Concerning Contents of Record on Appeal..	39

Names and Addresses of Attorneys.

For Defendant and Appellant:

SAMUEL W. McNABB, Esq.,

United States Attorney,

DOROTHY LENROOT BROMBERG, Esq.,

Assistant United States Attorney,

IGNATIUS F. PARKER, Esq.,

Assistant United States Attorney,

Federal Building,

Los Angeles, California.

For Complainants and Appellees:

McCUTCHEM, OLNEY,

MANNON & GREENE, Esqs.,

Roosevelt Building,

Los Angeles, California.

United States of America, ss.

To PACIFIC STEAMSHIP COMPANY, a corporation,
and UNION INSURANCE SOCIETY OF CAN-
TON, Ltd., a corporation, and

To McCutchen, Olney, Mannon & Greene, their attorneys,
Roosevelt Bldg., Los Angeles, California Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, on the 24th day of August, A. D. 1931, pursuant to Order allowing appeal, filed in the Clerk's Office of the District Court of the United States, in and for the Southern District of California, in that certain action entitled Pacific Steamship Company, a corporation, et al vs. Warren H. Pillsbury, Deputy Commissioner, et al, No. S-99-C, wherein the Deputy United States Commissioner for the 13th Compensation District is the defendant and appellant and you are the plaintiffs and appellees; and you are ordered to show cause, if any there be, why the decree in the said cause mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable HARRY A. HOLLZER
United States District Judge for the Southern District
of California, this.....day of August, A. D. 1931, and
of the Independence of the United States, the one hundred
and fifty-sixth

Hollzer

U. S. District Judge for the Southern District of
California.

Received copy of within citation this 8th day of August, 1931

McCutchen Olney Mannon & Greene
Attorneys for Appellees

[Endorsed]: In the United States Circuit Court of Appeals for the Ninth Circuit Pacific Steamship Company, et al vs. Warren H. Pillsbury, et al Citation Filed Aug 8 1931 R. S. Zimmerman, Clerk By B B Hansen Deputy Clerk

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA

PACIFIC STEAMSHIP COMPANY, a)
corporation, and UNION INSURANCE)
SOCIETY OF CANTON, LTD., a cor-)
poration,)

Complainants,)

vs.)

No. S 99-C)

WARREN H. PILLSBURY, Deputy Com-)
missioner, Thirteenth Compensation Dis-)
trict under the Longshoremen's and)
Harbor-workers' Act, and V. H. HAM-)
MER,)

Defendants.)

BILL OF COMPLAINT

Come now the complainants and for their bill of complaint against the defendants allege:

I.

That the complainant Pacific Steamship Company is now and at all times herein mentioned was a corporation

organized and existing under and by virtue of the laws of the State of Maine and an employer within the provisions of the Longshoremen's and Harbor Workers' Compensation Act, hereinafter referred to as the "Act".

II.

That the complainant Union Insurance Society of Canton, Ltd., is now and at all times herein mentioned was an insurance company organized as a corporation under and by virtue of the laws of the Kingdom of Great Britain, and authorized to do and doing business in the State of California, and the insurance carrier secured by the Pacific Steamship Company, a corporation, in accordance with the provisions of the Act.

III.

That the defendant Warren H. Pillsbury is now and at all times herein mentioned was the Deputy Commissioner of the Thirteenth Compensation District under the provisions of the Act.

IV.

That the defendant V. H. Hammer, hereinafter referred to as the "claimant", was, at the time of receiving the personal injury hereinafter referred to, an employee of the complainant Pacific Steamship Company, a corporation, within the provisions of the Act, a resident of San Diego, California, and as defendants are informed and believe and therefore allege, a citizen of the United States of America and of the State of California.

V.

That on August 16, 1930, the claimant sustained personal injury while working as a longshoreman in the employ of the complainant Pacific Steamship Company

upon the navigable waters of the United States, to-wit, on board a lighter then alongside the steamship RUTH ALEXANDER in the port of San Diego, California, within the aforesaid Thirteenth Compensation District. That the claimant made claim against complainants herein for compensation for said injury before the defendant, Warren H. Pillsbury, who, as said Deputy Commissioner, duly heard said claim and, upon evidence oral and documentary tendered by claimant and complainants, did, on November 20, 1930, make and file in his office his compensation order and award of compensation, copy of which is attached as Exhibit "A" hereto. That a copy of the record of hearing before said Deputy Commissioner, including transcript of oral testimony, and documentary evidence introduced by the parties, is filed herewith under the certificate of said Deputy Commissioner.

VI.

That said compensation order and award of compensation is not in accordance with law or with the provisions of the Act in the respects following: That it appears from the evidence adduced at said hearing that claimant did not work in the occupation of a longshoreman for substantially the whole of the year preceding his injury, his service in such employment in fact being less than five months of such immediately preceding year, earning therefrom at the maximum the sum of \$25.00 per week. That during said period of less than five months that claimant was engaged in the employment of a longshoreman claimant did not work regularly every day or any certain number of days per week or any certain number of hours per day on the days when claimant did work,

but claimant as all other longshoremen in the port of the City of San Diego and elsewhere worked for various employers and in various employments as a longshoreman when and if there was work in such employment for him to do. That the determination of earnings and the compensation rate to be based thereon is provided by Section 10 of said Act; that based upon the actual earnings of the claimant, to-wit, \$25.00 per week, his compensation rate under said section and under subdivision c thereof, is the sum of \$16.67 per week, which said sum the complainants paid to claimant from the date of said injury to the date of the termination of the disability of claimant. That the defendant Warren H. Pillsbury, as said Deputy Commissioner, erroneously failed and refused to determine said compensation rate pursuant to Section 10, subdivision c, of said Act, and determined the same under subdivision b thereof, fixing said compensation in the maximum amount allowable under said Act, to-wit, in the sum of \$25.00 per week. That said subdivision b, and subdivision a, of said Section 10 cannot fairly and reasonably be applied in determining said compensation rate for said claimant.

VII.

That said Deputy Commissioner Warren H. Pillsbury arbitrarily and capriciously in applying said Section 10, subdivision b, of said Act, considered and selected for determining the compensation which should be awarded to said claimant the annual earnings of another longshoreman who was not of the same class as claimant, but of a distinctly different and higher earnings class than said claimant, contrary to and in violation of the provisions of Section 10, subdivision b, of said Act.

VIII.

That said claimant V. H. Hammer was not at the time of his said injury nor at any time during the continuance of his disability and is not now entitled to compensation at the rate of \$25.00 per week as awarded by said Deputy Commissioner Warren H. Pillsbury in his compensation order and award dated November 20, 1930, nor is said claimant entitled to compensation at any rate in excess of \$16.67 per week, nor to any amount in excess of \$133.36 which, prior to said award, had been paid by complainants to said claimant. That the further sum of \$95.21 directed by said award to be paid, is not due or owing to said claimant under said award or at all, for the reason that in so far as it directs the payment of said further sum of \$95.21, said award is contrary to law as aforesaid.

IX.

That said claimant V. H. Hammer is insolvent and if an interlocutory injunction be not issued herein staying the payment of the amounts in excess of the \$16.67 per week required to be paid by the compensation order and award filed on the 20th day of November, 1930, as aforesaid, said excess payments would have to be made and if the complainants herein are successful in this action said payments in excess of \$16.67 per week cannot be recovered from said claimant and said complainants will lose the benefits of any favorable decision herein and by reason thereof will suffer irreparable damage.

WHEREFORE complainants pray that said compensation order and award be suspended and set aside and that the payments of the amounts in excess of \$16.67 per

week required by said award be stayed pending final decision herein; and for such other, further or different relief as to the Court may seem equitable and just, together with costs of suit.

Farnham P. Griffiths

McCutchen, Olney, Mannon & Greene,

Solicitors for Complainants

UNITED STATES OF AMERICA)
STATE OF CALIFORNIA	) ss.
CITY AND COUNTY OF SAN FRANCISCO)

J H Cooper, being first duly sworn, on oath deposes and says:

That he is an officer, to wit, Secretary of Pacific Steamship Company, a corporation, one of the complainants herein; that he makes this verification by authority for and on behalf of said complainants; that he has read the foregoing bill of complaint, knows the contents thereof, and that the same is true as he verily believes.

J H Cooper

Subscribed and sworn to before me this 13th day of December, 1930.

[Seal!]

Frank L. Owen

NOTARY PUBLIC

In and for the State of California,
City and County of San Francisco.

EXHIBIT "A"

UNITED STATES EMPLOYEES' COMPENSA-
TION COMMISSION
13th Compensation District

In the matter of the claim for com- .	
pensation under the Longshore- .	COMPENSATION
men's and Harbor Workers' .	ORDER
Compensation Act. .	
	AWARD OF
E. V. HAMMER, .	COMPENSATION
Claimant .	
against .	
	CASE NO. 10-526
PACIFIC STEAMSHIP CO., .	
Employer .	CLAIM NO. 383
UNION INSURANCE SOCIETY .	
OF CANTON, Ltd., .	
Insurance Carrier .	
.	

Such investigation in respect to the above entitled claim having been made as is considered necessary, and a hearing having been duly held in conformity with law, the Deputy Commissioner makes the following:

FINDINGS OF FACT

That on the 16th day of August, 1930, the claimant above named was in the employ of the employer above named at San Diego, in the State of California in the 13th Compensation District, established under the provisions of the Longshoremen's and Harbor Workers' Compensation Act, and that the liability of the employer for compensation under said Act was insured by the Union Insurance Society of Canton, Ltd.

That on said day claimant herein while performing service for the employer as a stevedore on board a lighter then alongside one of the defendant's ships sustained accidental injury occurring in the course of and arising out of his employment and resulting in disability as follows: while at work he slipped and fell on his wrist spraining it;

That notice of injury was not given within thirty days, but that the employer had knowledge of the injury and that the employer has not been prejudiced by failure to give notice;

That the employer furnished claimant with medical treatment, etc., in accordance with section 7 (a) of the said act:

PAGE TWO

That the claimant did not work as a stevedore for substantially the whole of the year preceding his injury, his service in such employment in fact commencing on April 4, 1930 and terminating with his injury; that during the time that claimant worked as a stevedore he was able and willing to work and sought work on each working day with the exception of two or three days during the period which are considered negligible; that another stevedore employed at the port of San Diego during the year immediately preceding claimant's injury, i. e., one Trimble, worked substantially the whole year as a stevedore and earned during said year wages in excess of \$1,950.00, the maximum provided by said Act; that claimant's wages and compensation rate is therefore fixed at said maximum under section 10 (b) of said Act;

That as the result of the injury sustained the claimant was wholly disabled from the date thereof to Monday,

October 20, 1930 and is entitled to 9 and 1/7 weeks compensation, \$25. a week for such disability amounting to \$228.57;

Jurisdiction is reserved to determine hereafter whether said injury has caused disability subsequent to October 20, 1930;

That the employer has paid compensation for 8 weeks at \$16.67 a week to and including Oct. 12, 1930, amounting to \$133.36 and is entitled to credit therefore together with any further payments which may have been made subsequent to the date of the hearing:

Upon the foregoing facts the Deputy Commissioner makes the following:

AWARD

That the employer, the Pacific Steamship Company, and the insurance carrier, the Union Insurance Society of Canton, Ltd., shall pay to the claimant compensation as follows:

The sum of \$95.21 to claimant forthwith

Given under my hand at San Francisco, California.

this 20th day of November, 1930.

WARREN H. PILLSBURY

Deputy Commissioner

13th Compensation District

WHP:P

[Endorsed]: S 99-C In the District Court of the United States for the Southern District of California Pacific Steamship Company, a corporation, and Union Insurance Society of Canton, Ltd., a corporation, Complainants, vs. Warren H. Pillsbury, Deputy Commissioner, Thirteenth Compensation District under the Longshoremen's and Harbor Workers' Act, and V. H. Hammer,

Defendants Bill of Complaint McCutchen, Olney, Mannon
& Greene Attorneys for Complainants. Balfour Building
San Francisco, California Roosevelt Building Los An-
geles, California

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE SOUTHERN DISTRICT
OF CALIFORNIA

PACIFIC STEAMSHIP COMPANY,)
a corporation, and UNION INSUR-)
ANCE SOCIETY OF CANTON,)
LTD., a corporation,)

Complainants,)

vs.)

No. S-99-C)

WARREN H. PILLSBURY, Deputy)
Commissioner, Thirteenth Compensa-)
tion District under the Longshore-)
men's and Harbor-workers' Act, and)
V. H. HAMMER,)

Defendants.)

NOTICE OF MOTION FOR LEAVE TO AMEND
BILL OF COMPLAINT

TO: Warren H. Pillsbury, as Deputy Commissioner,
Thirteenth Compensation District, United States Em-
ployees Compensation Commission, defendants, and
to Samuel W. McNabb, United States Attorney, and
Ignatius F. Parker and Dorothy Lenroot Bromberg,
Assistant United States Attorneys, Solicitors for said
defendant.

TO: V. H. Hammer, defendant:

You and each of you will please take notice, and you
are hereby notified, that on Monday, the 16th day of

March, 1931, at the hour of 10 o'clock A. M. of said day, or as soon thereafter as counsel can be heard, complainants will move the court for an order granting them leave to amend the bill of complaint on file in the above entitled case in the manner and form set forth in the copy of said amendment herewith annexed.

Dated: San Francisco, California, March 3, 1931.

McCutchen, Olney, Mannon & Greene,
Farnham P. Griffiths

Charles E. Finney

Solicitors for Complainants

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA

PACIFIC STEAMSHIP COMPANY,)
a corporation, and UNION INSUR-)
ANCE SOCIETY OF CANTON,)
LTD., a corporation,)

Complainants,)

vs.)

No. S-99-C

WARREN H. PILLSBURY, Deputy)
Commissioner, Thirteenth Compensa-)
tion District under the Longshore-)
men's and Harbor-workers' Act, and)
V. H. HAMMER,)

Defendants.)

AMENDMENT TO BILL OF COMPLAINT

Complainants above named, having obtained leave of court, file this amendment to their bill of complaint as follows:

Amend paragraph VI of said bill of complaint to read as follows:

VI.

That said compensation order and award of compensation is not in accordance with law or with the provisions of the Act in the respects following: That it appears from the evidence adduced at said hearing that claimant did not work in the occupation of a longshoreman for substantially the whole of the year preceding his injury, his service in such employment in fact being less than five months of such immediately preceding year, earning therefrom less than the sum of \$25.00 per week. That during said period of less than five months that claimant was engaged in the employment of a longshoreman claimant did not work regularly every day or any certain number of days per week or any certain number of hours per day on the days when claimant did work, but claimant as all other longshoremen in the port of the City of San Diego and elsewhere worked for various employers and in various employments as a longshoreman when and if there was work in such employment for him to do. That the determination of earnings and the compensation rate to be based thereon is provided by Section 10 of said Act; that based upon the actual earnings of the claimant, his compensation rate under said section and under subdivision c thereof, is not to exceed the sum of \$16.67 per week, which said sum the complainants paid to claimant from the date of said injury to the date of the termination of the disability of claimant. That the defendant Warren H. Pillsbury, as said Deputy Commissioner, erroneously failed and refused to determine said compensation rate

pursuant to Section 10, subdivision c, of said Act, and determined the same under subdivision b thereof, fixing said compensation in the maximum amount allowable under said Act, to wit, in the sum of \$25.00 per week. That said subdivision b, and subdivision a, of said Section 10 cannot fairly and reasonably be applied in determining said compensation rate for said claimant.

Add the following paragraph:

VIII-A

That the construction placed upon Section 10 of the Act by said defendant, Warren H. Pillsbury, results in the compensation of said claimant being computed on an arbitrary and unreasonable basis, not according to any prescribed scale gauged by the previous wages or earnings of claimant, and so construed said Act deprives complainants of their property without due process of law, and by reason thereof said Act is void and repugnant to the Fifth Amendment of the Constitution of the United States.

McCutchen, Olney, Mannon & Greene,
Farnham P. Griffiths,
Charles E. Finney,

Solicitors for Complainants.

[Endorsed]: No. S-99-C In the District Court of the United States for the Southern District of California. Pacific Steamship Company, a corporation, and Union Insurance Society of Canton, Ltd., a corporation, complainants, vs. Warren H. Pillsbury, Deputy Commissioner, Thirteenth Compensation District under the Longshoremen's and Harbor-Workers' Act, and V. H. Hammer, Defendants. Notice of Motion for Leave to Amend Bill

of Complaint. Receipt of a copy of the within motion admitted March 5/1931 Dorothy Lenroot Bromberg Ass. U. S. Attorney Filed Mar 5 - 1931 R. S. Zimmerman, Clerk By M L Gaines Deputy Clerk McCutchen, Olney, Mannon & Greene Counselors at Law Balfour Building San Francisco, California Roosevelt Building, Los Angeles, California

IN THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION.

PACIFIC STEAMSHIP COMPANY,)
a corporation, and UNION INSUR-)
ANCE SOCIETY OF CANTON,)
LTD., a corporation,) No. S-99-C
Complainants,) ANSWER.
vs.)
WARREN H. PILLSBURY, Deputy)
Commissioner, Thirteenth Compensa-)
tion District under the Longshore-)
men's and Harbor-workers' Act, and)
V. H. HAMMER,)
Defendants.)
-----)

COMES now the defendant, Warren H. Pillsbury, Deputy Commissioner, 13th Compensation District, United States Employees' Compensation Commission, by his attorneys, SAMUEL W. McNABB, United States Attorney for the Southern District of California, and

IGNATIUS F. PARKER, and DOROTHY LENROOT BROMBERG, Assistant United States Attorneys for said district, and for Answer to the Bill of Complaint filed herein, admits, denies and alleges as follows:

I.

Admits the allegations of Paragraphs I, II, III, IV and V of the Bill of Complaint herein.

II.

Answering Paragraph VI of the Bill of Complaint herein, this defendant admits that it appears from the evidence adduced at said hearing that claimant did not work in the occupation of a longshoreman for substantially the whole of the year preceding his injury, and further admits the allegation that this defendant determined the compensation awarded to the claimant under Section 10 (b), Longshoremen's and Harbor Workers' Compensation Act, and further admits that the complainants herein paid to the claimant compensation for 8 weeks at \$16.67 a week to and including October 12, 1930, amounting to \$133.36, and denies each and every remaining allegation of Paragraph VI of Complainant's Bill herein.

III.

Answering Paragraphs VII and VIII of Complainants' Bill herein, this defendant denies each and every allegation therein contained.

IV.

Answering paragraph IX of the Bill of Complaint herein, this defendant alleges that he is without information or belief sufficient to enable him to answer said Paragraph IX and on that ground denies each and every allegation of said Paragraph IX.

WHEREFORE, defendant, Warren H. Pillsbury, as Deputy Commissioner, 13th Compensation District, United States Employees' Compensation Commission, prays that the complainants take nothing by their Bill of Complaint herein and that said Bill of Complaint be dismissed with costs against the complainants herein, and for such other and further relief as to the Court may seem proper in the premises.

Samuel W. McNabb
 SAMUEL W. McNABB,
 UNITED STATES ATTORNEY,
 Ignatius F. Parker
 IGNATIUS F. PARKER,
 Assistant U. S. Attorney,
 Dorothy Lenroot Bromberg
 DOROTHY LENROOT BROMBERG,
 Assistant U. S. Attorney,
 Attorneys for Defendant, Warren H.
 Pillsbury, as Deputy Commissioner,
 Thirteenth Compensation District,
 United States Employees' Compensation
 Commission.

UNITED STATES OF AMERICA,
 SOUTHERN DISTRICT OF CALIFORNIA)
) ss.
 Central Division.)

WARREN H. PILLSBURY, being first duly sworn,
 deposes and says:

That he is Deputy Commissioner of the 13th Compensation District, United States Employees' Compensation Commission, and one of the defendants in the above enti-

tled action; that he has read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are herein stated on his information or belief, and as to those matters that he believes it to be true.

Warren H Pillsbury

WARREN H. PILLSBURY.

SUBSCRIBED AND SWORN to before me this 14 day of January, 1931.

[Seal]

Mary S. Haines

NOTARY PUBLIC

in and for the County of Los Angeles,
State of California

My Commission Expires Jan. 28, 1933

[Endorsed]: No. S-99-C In the District Court of the United States for the Southern District of California. Central Division. Pacific Steamship Company, a corporation, and Union Insurance Society of Canton, Ltd., a corporation, Complainants, vs. Warren H. Pillsbury, Deputy Commissioner, 'Thirteenth Compensation District under the Longshoremen's and Harbor-workers' Act, and V. H. Hammer, Defendants. Answer. Received copy of within answer this 23d day of January, 1931 McCutchen Olney, Mannon & Greene Attorney for Complainants. Filed Jan 23 1931 R. S. Zimmerman, Clerk By M L Gaines Deputy Clerk

At a stated term, to wit: The FEBRUARY Term, A. D. 1931, of the District Court of the United States of America, within and for the CENTRAL Division of

the Southern District of California, held at the Court Room thereof, in the City of LOS ANGELES on MONDAY the 9TH day of FEBRUARY in the year of our Lord one thousand nine hundred and thirty-One

Present:

The Honorable GEO. COSGRAVE, District Judge.

Pacific Steamship Company,)	
a corporation, et al.,	Plaintiffs,)	
)	
vs.	)	No. S-99-C-Eq.
)	
Warren H. Pillsbury, etc.,	Defendants.)	

This cause coming before the Court for hearing on Motion of Complainants for Interlocutory Injunction pursuant to Notice, etc., filed January 30th, 1931; and, for hearing on Motion of Warren H. Pillsbury for the Court to hear, consider and rule; Harold A. Black, Esq., of the firm of Messrs. McCutchen, Olney, Mannon & Greene, appearing as counsel for the plaintiffs, argues to the Court in support of said Motion for Interlocutory Injunction, whereupon, Dorothy L. Bromberg, Assistant United States Attorney, appearing as counsel for the Government, argues to the Court in opposition to said Motion, and said Attorney Black having thereupon argued further to the Court, said Motion is denied and exception noted for Complainants, and that said Motion of Warren H. Pillsbury for the Court to hear, consider and rule be submitted on briefs to be filed 15 x 15; date for oral argument to be determined later pending decision in another case in another court in another jurisdiction.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA CENTRAL DIVISION

PACIFIC STEAMSHIP COMPANY,) a corporation, and UNION INSUR-) ANCE SOCIETY OF CANTON,) LTD., a corporation, )	)	No. S-99-C.
	) Complainants,)	
)	
-vs-	)	Decision.
)	
WARREN H. PILLSBURY, Deputy) Commissioner, Thirteenth Compensa-) tion District under the Longshore-) men's and Harbor-workers' Act, and) V. H. HAMMER,))	
)	
	) Defendants.)	
)	

The bill of complaint in this action seeks suspension and setting aside of the order of Warren H. Pillsbury, Deputy Commissioner of the Thirteenth Compensation District under the Longshoremen's and Harbor Workers' Act, (44 Stat. 1424; 33 USCA 901), wherein the Deputy Commissioner awarded to V. H. Hammer compensation for injury suffered while working as a stevedore on board a lighter then alongside one of the plaintiff's ships at the port of San Diego. Compensation was awarded at the rate of \$25.00 a week under Section 10 of the Act.

Claimant had been employed as teamster for San Diego County for a number of months and began work as a stevedore on April 6, 1930. He continued in this employment until August 16th following, a period of four and one half months, when the accident occurred from

which he suffered the injury. It was admitted that this was in the course of his employment.

The testimony on which the award is based is so confusing and uncertain as to render a clear finding of facts by the Commissioner very difficult and a review of the evidence by the court equally so. Claimant stated that he had worked as much as five days a week and a total of 270 days during the year and estimated his wages as \$35 a week. This estimate, however, was not based on any exact figures but upon his living expenses. From the time he commenced as a stevedore he lost no time on account of illness and took but a few days vacation and was on hand daily to accept any offered employment.

It fairly appears from the testimony taken at the hearing that the stevedore workers at San Diego harbor may be placed in three general classes: Those constituting a regular gang that worked on the "white boats", being the Steamships Harvard and Yale, at least four days a week, and had a preference as to all other cargo handling and had fairly regular employment. The next in order are referred to as the lumber list, whose employment was not so steady and continuous as those on the list just mentioned. The third list was known as the cargo list. When there were not enough men to supply the lumber list they were taken from the cargo list. Claimant was on the latter list. He worked on some lumber boats and occasionally on the Harvard or Yale. He was not in a regular gang. Only men in the regular gang or preferred list worked as much as 270 days or parts of days a year. The manager of the Marine Service Bureau, which seemed to be the principal agency in distributing the work at San

Diego, was called as a witness and believed that claimant was earning over \$100 per month but he could not say how much. The average earnings of men in the class similar to that of claimant were estimated by him to be \$130 a month. None made more than \$150. The nearest approach to accuracy in the entire testimony is the amount actually earned by claimant during the four and one half months of his employment. This is conceded to be \$355.38, or a weekly amount of \$19.00, and of this amount \$50 is estimated. Trimble, upon whose earnings the award to claimant was based, was on the regular gang working the Harvard and Yale regularly. He was described by the Pacific Coast S. S. Co. as working harder and longer hours than any other man on the waterfront and averaged \$223.79 per month.

The Commissioner found that claimant did not work substantially the whole of the year preceding his injury; that he was able and willing to work and sought work on each working day; "that another stevedore employed at the port of San Diego during the year immediately preceding claimant's injury, i. e., one Trimble, worked substantially the whole of the year as a stevedore and earned during said year wages in excess of \$1950; . . . that claimant's wage and compensation rate is therefore fixed at such maximum under Section 10 (b) of said Act."

Complainant's point of attack is the action of the Commissioner in fixing the compensation of claimant under subdivision (b) of Section 10 instead of under subdivision (c), and further rating compensation of claimant according to that earned by the workman Trimble who, complainant claims, is not in a class similar to that of claimant within the contemplation of the Act.

The Act in question, Longshoremen's and Harbor Workers' Act, (44 Stat. 1424; 33 USCA 901), provides in Section 910:

"Except as otherwise provided in this chapter, the average weekly wage of the injured employee at the time of the injury shall be taken as the basis upon which to compute compensation and shall be determined as follows:

(a) If the injured employee shall have worked in the employment in which he was working at the time of the injury, whether for the same or another employer, during substantially the whole of the year immediately preceding his injury, his average annual earnings shall consist of three hundred times the average daily wage or salary which he shall have earned in such employment during the days when so employed.

(b) If the injured employee shall not have worked in such employment during substantially the whole of such year, his average annual earnings shall consist of three hundred times the average daily wage or salary which an employee of the same class working substantially the whole of such immediately preceding year in the same or in similar employment in the same or a neighboring place shall have earned in such employment during the days when so employed.

(c) If either of the foregoing methods of arriving at the annual average earnings of an injured employee can not reasonably and fairly be applied, such annual earnings shall be such sum as, having regard to the previous earnings of the injured employee and of other employees of the same or most similar class, working in the same or most similar employment in the same or a neighboring locality,

shall reasonably represent the annual earning capacity of the injured employee in the employment in which he was working at the time of the injury.

By the provisions of the Act involved in this action (Longshoremen's and Harbor Workers' Act, 44 Stat. 1424; 33 USCA 901), two general methods of arriving at the compensation to be awarded injured employees are provided, with a third method which is to be used when neither of the first two can reasonably and fairly be applied. This may be said to result in three divisions of employees: First, those who have worked substantially the whole of the year immediately preceding the injury and whose average annual earnings are fixed at three hundred times the average daily wage earned during the time they were so employed. Second, those who have not worked the whole of such year; their average annual earnings are deemed to be three hundred times the average daily wage of a person of the same class who works substantially the whole of such year in similar employment and neighborhood.

It is evident that both of these provisions contemplate employment that is continuous and regular to the extent of affording employment for substantially the whole of the year. By administrative construction a variation or tolerance of ten percent from the 300 day standard year is allowed so that the minimum constituting what is substantially a whole year is 270 days. In order to effect a computation under subdivision (b) the employment must be such that there are those who have worked in it or similar employment substantially the whole of the year immediately preceding the injury.

The third method is to be used when neither of the methods mentioned can fairly and reasonably be applied. This situation might arise in many cases. For instance if an employee works 365 days a year it would be an injustice to him to compensate him on the basis of only 300 days. On the other hand if an employee worked fewer than 270 days it would be unfair to the employer to fix his compensation on the assumption that he worked a full 300 days.

In the third case, i. e., if either of the methods described cannot reasonably and fairly be applied, the compensation is to be based on the annual earning capacity of the injured employee. the elements determining this being the previous earnings of the injured employee and of other employees in a situation most nearly similar.

Two questions are presented to the court: Was the Commissioner justified in fixing the compensation of claimant as provided in subdivision (b) of Section 10 of the Act, i. e., according to the wages earned by one who was employed during substantially the whole of the year in a similar employment in the same locality? If this course was proper, was the basis of comparison, i. e., the wages of Trimble, a proper one?

Admittedly there were three classes of stevedores at San Diego. Trimble was on a regular gang or preferred list, the members of which were the only ones working 270 days a year. Claimant was not on this list but was on the cargo list and did not work 270 days a year. Trim-

ble worked harder and longer hours than any other man on the waterfront. He was on the preferred list, the one most favorably situated. Claimant was on the least preferred, the most unfavorably situated. In the face of claimant's actual earnings of \$355, or less than \$90 per month, and his situation on a list not working 270 days a year he cannot be deemed in the same class as Trimble. Since no one in claimant's class worked substantially the whole of the year immediately preceding his injury, there is no basis of comparison by which the provisions of subdivision (b) can be applied.

Mahoney vs. Marshall, 46 Fed (2d) 539.

Luckenbach Steamship Co. vs. Marshall, Decided by Judge McNary on March 16, 1931, District Court of Oregon. Undecided by Circuit Court to date.

Nelson Co. vs. Pillsbury, 48 Fed (2d) 883.

The Act in question is wise in its conception and beneficial in its operation. It must be interpreted and enforced with such care that it shall not be an agency of unfairness either to the employer or to the employee. Its careful and fair administration is the best guaranty of its permanence.

The proceedings are therefore referred back to the Commissioner with instructions to fix the compensation of claimant as under subdivision (c).

Geo. Cosgrave

U. S. District Judge.

[Endorsed]: No. S-99-C Eq. Filed Jun 26 1931
 R. S. Zimmerman, Clerk By Francis E. Cross, Deputy
 Clerk

At a stated term, to wit: The FEBRUARY Term, A. D. 1931, of the District Court of the United States of America, within and for the CENTRAL Division of the Southern District of California, held at the Court Room thereof, in the City of LOS ANGELES on FRIDAY the 26th day of JUNE in the year of our Lord one thousand nine hundred and thirty-One

Present:

The Honorable GEO. COSGRAVE, District Judge.

Pacific Steamship Co., a corp., et al.,)	
	)	Plaintiffs,
vs.)	
	)	No. S-99-C
Warren H. Pillsbury, Deputy	)	Eq.
Commissioner, et al.,	)	Defendants.

On February 9, 1931, the cause having been ordered submitted on briefs 15 x 15 etc. and briefs having been filed and duly considered, upon consideration whereof the court now files its "Decision," and, pursuant thereto, the proceedings are referred back to the commissioner with instructions to fix the compensation of claimant etc.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA CENTRAL DIVISION

PACIFIC STEAMSHIP COMPANY,)
a corporation, and UNION INSUR-)
ANCE SOCIETY OF CANTON,)
LTD., a corporation.)

Complainants,)

-vs-

) No. S-99-C.
)

WARREN H. PILLSBURY, Deputy)
Commissioner, Thirteenth Compensa-)
tion District under the Longshore-)
men's and Harbor-workers' Act, and)
V. H. HAMMER,)

) Defendants.)
)

DECREE.

This cause came regularly on to be heard at this term of court on March 23, 1931 upon complainants' bill of complaint, amendment to bill of complaint, answer of defendant Warren H. Pillsbury, Deputy Commissioner, Thirteenth Compensation District, United States Employees Compensation Commission, and certified copy of the transcript and record of hearings before said Deputy Commissioner, the complainants and defendant Warren H. Pillsbury appearing through their respective counsel, and defendant V. H. Hammer not appearing although duly and regularly served with process by the United States Marshal; and said cause having been fully argued, briefed and submitted, and the court being fully

advised of the law and the facts renders herein its decree.

FINDINGS OF FACT.

The court finds that claimant V. H. Hammer had been engaged in the employment of a longshoreman for a period of 4½ months prior to the time when he sustained the injury for which he claims compensation; that during that period he earned Three hundred fifty-five dollars and thirty-eight cents (\$355.38), or a weekly amount of approximately Nineteen dollars (\$19.00); that said claimant did not work as much as 270 days during the year immediately preceding his injury, nor did he work at an equivalent rate during the weeks that he was engaged in the longshoring industry; that said claimant did not work at the rate of 6 days or parts of days per week during the time when he was employed in said industry; that said claimant was ready to work if he could have secured employment on all but a few days during the time that he was employed in said industry; and

The court finds that longshoremen at the port of San Diego where said claimant was employed and injured are divided in three general classes, namely: those employed in regular gangs in this employment, those who specialize in the handling of lumber, and those on the general cargo list who receive such work as is not obtained by either of the first two classes; that one Trimble, upon whose earnings the award of claimant was based, was a member of the first class and secured more work than any other longshoreman in the port of San Diego during the year immediately preceding the injury to claimant; that said claimant was a member of the third class,

all of whom secured less than 270 days or parts of days work during the year.

CONCLUSIONS OF LAW.

From the foregoing facts the Court concludes as matters of law that Subdivision (b) of Section 10 of the Longshoremen's and Harborworkers' Compensation Act cannot reasonably and fairly be applied to determine the annual average earnings of said claimant; that Subdivision (c) of said Section 10 of said Longshoremen's and Harborworkers' Compensation Act should have been applied by said Deputy Commissioner to arrive at the annual average earnings of said claimant; that said claimant and said Trimble are not in the same class within the longshoring industry and that the award of said defendant Deputy Commissioner is not in accordance with law; and

BY REASON OF THE PREMISES, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said compensation order and award of compensation made by said defendant Deputy Commissioner in favor of said claimant V. H. Hammer on the 20th day of November, 1930, be and the same is hereby suspended and set aside; and the said defendant Warren H. Pillsbury, Deputy Commissioner for the Thirteenth Compensation District under the Longshoremen's and Harborworkers' Compensation Act be and he is hereby enjoined from enforcing said compensation order and award of compensation made by him on said 20th day of November, 1930; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that said proceedings herein be and they

are hereby referred back to said defendant Deputy Commissioner, and said Deputy Commissioner be and he is hereby directed to make a compensation order and award of compensation in said proceeding in accordance with this decree and in accordance with the opinion filed herein on June 26, 1931; and that no other or further or different compensation order or award of compensation be made or entered; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that said claimant and defendant V. H. Hammer pay back to complainants herein any sums which may have been received by him in excess of the amounts which may be due him under the compensation order and award of compensation which is to be made and entered herein by said Deputy Commissioner in accordance with law and this decree and the opinion of this Court.

Dated: July 2nd, 1931.

Geo. Cosgrave

United States District Judge.

Approved as to form as provided in Rule 44.

McCutchen, Olney, Mannon & Greene

Not approved as to form because of the objections filed herewith

Received copy of within Decree this 1st day of July, 1931

Dorothy Lenroot Bromberg

Attorney for Defendant.

Decree entered and recorded 7/2/31. R. S. Zimmerman Clerk. By Francis E. Cross Deputy Clerk.

[Endorsed]: No. S-99-C. In the District Court of the United States for the Southern District of California, Central Division. Pacific Steamship Company, a corporation, and Union Insurance Society of Canton, Ltd., a corporation, Complainants, -vs- Warren H. Pillsbury, Deputy Commissioner, 'Thirteenth Compensation District under the Longshoremen's and Harborworkers' Act, and V. H. Hammer, Defendants. Decree. Filed Jul 2 1931 R. S. Zimmerman, Clerk By Francis E. Cross, Deputy Clerk, McCutchen, Olney, Mannon & Greene Attorneys for Complainants. Balfour Building San Francisco, California

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

PACIFIC STEAMSHIP COMPANY,)	
a corporation, (
UNION INSURANCE SOCIETY OF)	
CANTON, Ltd., a corporation, (
)	
Complainants, (	No. S-99-C
)	
vs. (
)	PETITION
WARREN H. PILLSBURY, Deputy (	FOR
Commissioner 13th Compensation Dis-)	APPEAL
trict, under the Longshoremen's and (
Harbor Workers' Compensation Act,)	
and (
V. H. HAMMER,)	
Defendants and (
Appellants.)	

TO THE HONORABLE GEORGE COSGRAVE,
DISTRICT JUDGE:

The above named defendant WARREN H. PILLSBURY, feeling agrieved by the Decree and Findings of Fact and Conclusions of Law rendered and entered in the above entitled cause on the 2nd day of July, 1931, does hereby appeal from said Decree to the Circuit Court of Appeals for the Ninth Circuit for the reasons set forth in the Assignments of Errors filed herewith, and your Petitioner respectfully prays that the appeal be allowed and that Citation be issued as provided by law, and that a transcript of the record proceedings and documents upon which said Decree was based, duly authenticated, be sent to the United States Circuit Court of Appeals for the Ninth Circuit under the rules of such court in such cases made and provided.

Samuel W. McNabb

SAMUEL W. McNABB

United States Attorney

IGNATIUS F. PARKER

Assistant United States Attorney

Dorothy Lenroot Bromberg

DOROTHY LENROOT BROMBERG

Assistant United States Attorney

DATED: This 7th day of August, 1931.

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

PACIFIC STEAMSHIP COMPANY,))
a corporation, ()
UNION INSURANCE SOCIETY OF))
CANTON, Ltd., a corporation, ()
)
Complainants, ()
)
vs. ()
)
WARREN H. PILLSBURY, Deputy ()
Commissioner 13th Compensation Dis-))
trict, under the Longshoremen's and ()
Harbor Workers' Compensation Act,))
and ()
V. H. HAMMER, ()
)
Defendants and ()
Appellants.))

No. S-99-C

ORDER
ALLOWING
APPEAL

The Petition of the Defendant in the above entitled cause for an appeal from the Final Decree is hereby granted and the appeal is allowed; and shall suspend and stay all further proceedings in this court until the termination of said appeal by the United States Circuit Court of Appeals for the Ninth Circuit.

Hollzer
United States District Judge

DATED: This 7 day of August, 1931.

[Endorsed]: No. S-99-C In the District Court of the United States for the Southern District of California Central Division Pacific Steamship Co, et al vs. Warren H. Pillsbury, et al Order and Petition on Appeal Filed Aug 8 1931 R. S. Zimmerman, Clerk By B. B. Hansen Deputy Clerk

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA
CENTRAL DIVISION

PACIFIC STEAMSHIP COMPANY,)	
a corporation, (
UNION INSURANCE SOCIETY OF)	
CANTON, Ltd., a corporation, (
)	
Complainants, (	No. S-99-C
vs.)	
)	
WARREN H. PILLSBURY, Deputy)	ASSIGN-
Commissioner 13th Compensation Dis- (	MENT OF
trict, under the Longshoremen's and)	ERRORS
harbor Workers' Compensation Act, (
and)	
V. H. HAMMER, (
)	
Defendants and (
Appellants.)	

Comes now the defendant and appellant, Warren H. Pillsbury, Deputy Commissioner for the 13th Compensation District in the above entitled cause and files the following Assignment of Errors upon which he will rely in the prosecution of the appeal herein petitioned for in said cause from the decree of this Honorable Court entered on the 2nd day of July, 1931.

I.

The Court erred in finding that the exact amount the claimant V. H. Hammer earned during the period he was employed as stevedore was \$355.38.

II.

The Court erred in finding that said claimant did not work at the rate of six days or parts of days per week during the time he was employed in said industry.

III.

The Court erred in finding that longshoremen in the Port of San Diego are divided into three general classes within the meaning of the Longshoremen's and Harbor Workers' Compensation Act.

IV.

The Court erred in finding that one Trimble upon whose earnings the award of said claimant was based, belonged to a different class within the meaning of the Longshoremen's and Harbor Workers' Compensation Act, than said claimant.

V.

The Court erred in its implied finding that there was no evidence before the Deputy Commissioner which, if believed, would make the amount awarded to said claimant by the Deputy Commissioner fair and reasonable within the intent of Section 10 of the Longshoremen's and Harbor Workers' Compensation Act.

VI.

The Court erred in its conclusion of law that Subdivision (b) of Section 10 of the Longshoremen's and Harbor Workers' Compensation Act, cannot reasonably and fairly be applied to determine the annual average earnings of said claimant and that Subdivision (c) of said Section of said Act should have been applied by said Deputy Commissioner to arrive at the average annual earnings of said claimant.

VII.

The Court erred in its implied conclusion of law that wherever the result obtained by applying Subdivision (b) of Section 10 of the Longshoremen's and Harbor Workers' Compensation Act is in excess of the actual earnings of the claimant, said section cannot fairly and reasonably be applied.

VIII.

The Court erred in suspending and setting aside the Compensation order and award of compensation made by

the Deputy Commissioner, defendant herein, on the 20th day of November, 1930, in favor of the claimant V. H. Hammer, and in enjoining the enforcement of such order and award.

IX.

The Court erred in ordering, adjudging and decreeing that said claimant and defendant V. H. Hammer pay back to the plaintiffs herein any sums which may have been received by him under the compensation order and award of compensation which the court has ordered said Deputy Commissioner to make in accordance with its decree, for the reasons that:

(a) The Court has only such jurisdiction under the Longshoremen's and Harbor Workers' Compensation Act as is given to it by the terms of said Act, and the Act does not provide for an order compelling the claimants of a compensation award to repay to the employer or insurance companies any amount he may have received in excess of that that the Deputy Commissioner may be required to make by order of the Court;

(b) Said decree was prematurely entered in that V. H. Hammer herein, although duly served with process, made no appearance in the case and his default was not entered.

(c) Said portion of the decree is based upon issues not made by the pleadings.

Samuel W. McNabb

SAMUEL W. McNABB,

United States Attorney,

Dorothy Lenroot Bromberg

DOROTHY LENROOT BROMBERG

Assistant United States Attorney,

Ignatius F. Parker

IGNATIUS F. PARKER,

Assistant United States Attorney.

DATED: This 7th day of August, 1931.

[Endorsed]: No. S-99-C In the District Court of the United States for the Southern District of California, Central Division Pacific Steamship Co. et al vs. Warren H. Pillsbury, et al Assignment of Errors Filed Aug 8 1931 R. S. Zimmerman, Clerk By B B Hansen, Deputy Clerk

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

PACIFIC STEAMSHIP COM-)
PANY, a corporation, and ()
UNION INSURANCE SO-)
CIETY OF CANTON, Ltd., ()
a corporation,)
Complainants,)

No. S-99-C

vs.

WARREN H. PILLSBURY,)
Deputy Commissioner 13th ()
Compensation District, under)
the Longshoremen's and Har- ()
bor Workers' Compensation)
Act, and ()
V. H. HAMMER,)
Defendants and ()
Appellants.)

STIPULATION
CONCERNING
CONTENTS OF
RECORD ON
APPEAL

IT IS HEREBY STIPULATED by and between the parties hereto that the original copy of the record of hearing before the Deputy Commissioner, including the transcript of oral testimony and documentary evidence introduced by the parties and filed by the plaintiffs herein under the Certificate of the Deputy Commissioner and

referred to in Paragraph V of plaintiffs' complaint may be transmitted to the Clerk as part of the record on appeal herein, and shall be incorporated into the transcript of record on appeal herein in addition to the portions of the record indicated by the praecipe filed herein.

Samuel W. McNabb

SAMUEL W. McNABB,

United States Attorney,

Dorothy Lenroot Bromberg

DOROTHY LENROOT BROMBERG

Assistant United States Attorney

Ignatius F. Parker

IGNATIUS F. PARKER,

Assistant United States Attorney,

Attorneys for defendant

McCutchen, Olney, Mannon & Greene

Attorneys for Complainants.

DATED: This 7th day of August, 1931.

IT IS SO ORDERED:

Hollzer

United States District Judge.

[Endorsed]: No. S-99-C In the District Court of the United States for the Southern District of California Central Division Pacific Steamship Co, et al vs. Warren H. Pillsbury, et al Stipulation Concerning Contents of Record on Appeal Filed Aug 8 1931 R. S. Zimmerman, Clerk By B B Hansen, Deputy Clerk

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA
CENTRAL DIVISION

PACIFIC STEAMSHIP COMPANY,)
a corporation, UNION INSURANCE)
SOCIETY OF CANTON, Ltd., a cor-)
poration,)

Complainants,)

vs.)

No. S-99-C.

WARREN H. PILLSBURY, Deputy)
Commissioner, 13th Compensation Dis-)
trict, under the Longshoremen's and)
Harbor Workers' Compensation Act,)
and V. H. HAMMER,)

Defendants and Appellants.)

ORDER THAT ORIGINAL COPY OF THE REC-
ORD BEFORE THE DEPUTY COMMIS-
SIONER NEED NOT BE PRINTED AND MAY
BE TRANSMITTED BY THE CLERK TO THE
UNITED STATES CIRCUIT COURT OF AP-
PEALS.

ON MOTION of Samuel W. McNabb, United States
Attorney for the Southern District of California, and
Dorothy Lenroot Bromberg, Assistant United States At-
torney for said District, and good cause appearing there-
for;

IT IS HEREBY ORDERED that the original copy of
the Record of the Hearing before the Deputy Commis-
sioner, including the Transcript of oral testimony and
documentary evidence introduced by the parties and filed
by the Complainants herein, and referred to in Paragraph
V of Complainants' Complaint, need not be printed and

may be transmitted by the Clerk of this Court to the United States Circuit Court of Appeals for the Ninth Circuit as part of the record on appeal herein and returned to the files of this Court upon determination of the appeal in the United States Circuit Court of Appeals for the Ninth Circuit.

DATED: August 13, 1931.

Hollzer

United States District Judge.

[Endorsed]: Filed Aug 13 1931 R. S. Zimmerman,
Clerk, By Edmund L. Smith, Deputy Clerk.

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA
CENTRAL DIVISION

PACIFIC STEAMSHIP COM-)
PANY, a corporation and ()
UNION INSURANCE SOCIETY)
OF CANTON, Ltd., a corpora- ()
tion,)

Complainants,)

No. S-99-C

vs.)

WARREN H. PILLSBURY, Dep-)
uty Commissioner 13th Compen- ()
sation District, under the Long-)
shoremen's and Harbor Workers' ()
Compensation Act, and)

V. H. HAMMER,)

Defendants and)

Appellants. ()

PRAECIPE
FOR
TRANSCRIPT
OF RECORD

TO THE CLERK OF THE ABOVE ENTITLED
COURT:

Please prepare a record on appeal in the above entitled cause and include therein the following:

1. Bill of Complaint and Application for Mandatory Injunction;
2. Amendment to Bill of Complaint;
3. Answer;
4. Minute Order entered Monday the 9th day of February, 1931, denying plaintiffs' motion for an Interlocutory Injunction;
5. Decision entered June 26, 1931;
6. Minute order of June 26, 1931;
7. Petition for Appeal and Order allowing appeal;
8. Assignment of Errors;
9. Citation on Appeal;
10. Stipulation concerning contents of record on appeal;
11. This Praecipe.
12. Final Decree.

Samuel W. McNabb
SAMUEL W. McNABB
United States Attorney

Dorothy Lenroot Bromberg
DOROTHY LENROOT BROMBERG
Assistant United States Attorney,

Ignatius F. Parker,
IGNATIUS F. PARKER,
Assistant United States Attorney.

DATED: This 7th day of August, 1931.

IT IS HEREBY STIPULATED that the above material comprises the entire record on appeal.

McCutchen, Olney, Mannon & Greene
Solicitors for Complainants.

[Endorsed]: No. S-99-C In the District Court of the United States for the Southern District of California Central Division Pacific Steamship Co, et al, vs. Warren H. Pillsbury, et al Praecipe for Transcript of Record Filed Aug 10 1931 R. S. Zimmerman, Clerk By Edmund L. Smith Deputy Clerk

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA
CENTRAL DIVISION

PACIFIC STEAMSHIP COMPANY,)	
a corporation, and UNION INSUR-)	
ANCE SOCIETY OF CANTON,)	
LTD., a corporation,)	
)	
Complainants,)	
)	
-vs-	) No. S-99-C.
)	
WARREN H. PILLSBURY, Deputy)	
Commissioner, Thirteenth Compensa-)	
tion District under the Longshore-)	
men's and Harbor-workers' Act, and)	
V. H. HAMMER,)	
)	
Defendants.)	

CLERK'S CERTIFICATE.

I, R. S. Zimmerman, clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing 43 pages, numbered from 1 to 43 inclusive, to be the Transcript of Record on Appeal in the above entitled cause, as printed by the appellant, and presented to me for comparison and certification, and that the same has been compared and corrected by me and contains a full, true and correct copy of the citation; bill of complaint; notice of motion for leave to amend bill of complaint; amendment to bill of complaint; answer; minute order of February 9, 1931; decision; minute order of June 26, 1931; decree; petition for appeal; order allowing appeal; assignment of errors;

stipulation concerning contents of record on appeal, and praecipe.

I DO FURTHER CERTIFY that the fees of the Clerk for comparing, correcting and certifying the foregoing Record on Appeal amount to.....and that said amount has been paid me by the appellants herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the District Court of the United States of America, in and for the Southern District of California, Central Division, this..... day of August in the year of Our Lord One Thousand Nine Hundred and Thirty-one, and of our Independence the One Hundred and Fifty-sixth.

R. S. ZIMMERMAN,
Clerk of the District Court of the
United States of America, in
and for the Southern District of
California.

By

Deputy.

